IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Criminal Writ Petition No.1363 of 2005.

Mrs.Kausar Mohammed Akbar ..Petitioner

Versus

Shri A.N.Roy,
Commissioner ofPolice
& Others ..Respondents

Shri U.N.Tripathi for the Petitioner.

Shri D.S.Mhaispurkar, APP for the State.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 24th Oct., 2005

ORAL JUDGMENT (Per S.R.Sathe, J.)

1. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging the order of detention passed against her husband Akbar Mohamed Hussein Shaikh @ Akbar Dadhi, by the Respondent No.1, the Commissioner of Police, Brihan Mumbai on 15.3.2005 in exercise of the powers conferred by Section 3(i) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. (For the sake of convenience hereinafter referred to as "the said Act")

2. Admittedly, the Order of detention in question is based on two C.R's bearing No.206 of 2002 and 295 of

2004, registered at Mahim Police Station and in-camera statements of Witnesses A and B recorded on 24.1.2005 and 28.1.2005 respectively. From the above material, the Respondent No.1 found that the Petitioner's husband and his associates were belonging to Abu Salem Gang, and were moving in the localities of Naya Nagar Zopadpatti, Sion Dharavi Link Road Bridge, Janata Sewak Bridge, Hari Zandi Zopadpatti, Mori Road, Shantinagar Zopadpatti, Senapati Bapat Marg, Mahim(West) and adjoining areas, armed with revolvers, swords choppers and extort money from the shopkeepers in the name of Hafta. The people in the said locality had a feeling of insecurity in carrying out their day to day activities and they were in constant shadow of fear. The Petitioner's husband was released on bail in the above mentioned two C.R's. Action taken against him under the normal law of land was ineffective and inadequate. So, in order to prevent the activities of the detenu, which were prejudicial to the maintenance of the public order, the Respondent No.1 passed the above mentioned detention order.

3. It is not in dispute that the detention order was served upon the detenu alongwith the grounds of detention and translation of the said grounds of detention in Hindi.

4. At the outset it must be mentioned that though the Petitioner has challenged the order of detention on several grounds, Shri Tripathi, learned Advocate for the Petitioner has pressed into service only one ground at the time of hearing. The said ground is ground "C" mentioned in the petition. It runs as follows:

> "The Petitioner says and submits that the detaining authority has furnished to the detenu grounds of detention in English language alongwith its Hindi Translation to enable the detenu to make effective representation. The Petitioner says and submits that he is a Muslim by religion and his mother tongue is Hindi and well versed with Hindi Language even though he knows little English. The Petitioner says and submits that the Hindi translation of Para 6 of the grounds of detention wherein the satisfaction of the detaining authority is recorded is not the true and correct translation of the counterpart English grounds. As a result of non-furnishing of true and faithful translation where there are omissions and gross mistakes has created confusion to the detenu and as such he is deprived from making effective representation at the earliest. More particularly the last sentence in which the portion is wrongly translated which conveys opposite meaning and there are complete omission in the translation. The Petitioner says and submits that non-furnishing true and correct translation of the grounds in a language known to detenu amounts to non-communication of grounds thus violating the first fact of Art.22 (5) of the Constitution. The detenu could not make effective representation at the earliest being confused and misled which affects the second facet. Thus both the facets of Art.22(5) of the Constitution is violated. The Order of detention is illegal and bad in law, liable to be quashed and set aside."

The Respondent No.1 in his affidavit-in-reply and in particular in para 10 has contended that inadvertently some other areas were included in the translation, however, that by itself cannot be said to have confused or deprived the detenu of his right to make the representation against the order of detention. By virtue of the translated paragraph 6 of the grounds of detention, the detenu was in clear terms conveyed that the detaining authority was subjectively satisfied that the detenu was a dangerous person within the meaning of Section 2 (b-1) of the said Act and his activities were prejudicial to the maintenance of the public order. So, according to the Respondent No.1, there was no reason for the detenu to get himself mislead or confused, nor there was reason to hold that as a result of some error in the translation, the detenu could not make effective representation at the earliest. In fact, the detenu had made representation on 31.3.2005 through advocate and therefore it cannot be said that he was mislead by minor variance in the translation of the grounds of detention.

5. The main point to be decided in this petition is whether the translation of the grounds of detention furnished to the detenu was true and faithful translation of the original grounds of detention which

were in English. Secondly, whether there was any defect or error in the said translation which resulted in violating the fundamental right of the detenu to make an effective representation at the earliest in accordance with Article 22(5) of the Constitution of India.

6. In order to answer the above questions, one has to see what was the error or omission in Hindi translation. From the perusal of the grounds of detention which are in English it is clear that in paragraph 6 it was clearly mentioned that the detenu became perpetual danger to the society at large in the locality of Nayanagar Zopadpatti, Sion Dharavi Link Road Bridge, Janata Sevak Society, Hari Zandi Zopadpatti. However, in Hindi translation there was absolutely no mention of the above localities. On the contrary, it was mentioned that the prejudicial activities were carried out and it created danger at the localities of L.J.Marg, Sheetaladevi Mandir Marg, Pitamber Galli, M.M.C.Marg, Senapati Bapat Marg, Jain Mandir Marg,Kapad Bazaar Marg, Mahim Station Marg, Mahim (West)Zopadpatti, S.V.Road, Khar and Bandra of Greater Bombay. It is really very surprising to find as to how there is mention of the above localities in the Hindi translation, particularly when the same were

not at all mentioned in the original grounds of detention in English. That itself shows that proper documents were not considered or taken for translation and material of some other case might have been used. One can understand if there is some error in actually translating the sentence or there is some incorrect translation of the original English sentence, but one is at a loss to know as to how there is addition of material in Hindi translation. That itself creates doubt about the manner in which the entire process was carried out. It is needless to say that addition of these areas must have created some confusion in the mind of the detenu. Naturally it was bound to affect his right to make an effective representation at the earliest. This error of including unwanted, unrelated additional material in Hindi translation cannot be said to be minor or inconsequential defect.

7. In the grounds of detention in English it is mentioned that

> "you are habitual criminal and the action taken against you under the normal law of land, is found to be ineffective and inadequate to deter you from indulging in criminal activities, which are prejudicial to the maintenance of public order in Brihan Mumbai."

Admittedly, in Hindi translation of the grounds of detention there is absolutely no mention of the above

sentence. In other words, the particular reason for which the Respondent No.1 thought it necessary to pass order of detention is not at all mentioned in the grounds of detention translated in Hindi. It is needless to say that the above mentioned sentence was very material and of great importance. Naturally, absence of the said sentence has in fact made the grounds of detention incomplete. We are, therefore, of the view that the above mentioned lacunas and infirmities in Hindi translation of the grounds of detention have greatly affected the fundamental right of the detenu to make an effective representation at the earliest stage. Merely because the detenu had infact made a representation on 31.3.2005 through advocate we can't jump to the conclusion that his right under Article 22(5) of the Constitution of India has not been affected. Admittedly, since beginning the detenu was making a grievance that true correct and faithful translation of the original grounds of detention which are in English has not been provided to him. So, it has to be held that the fundamental right enshrined by Article 22(5) of the Constitution of India is violated.

8. In this view of the matter, it is necessary to quash and set aside the order of detention. Hence we

pass the following order:

ORDER

. The Petition is allowed.

2. The Order of detention passed by the Respondent No.1 against the detenu Akbar Mohamed Hussain Shaikh @ Akbar Dadhi, dated 15.3.2005 is set aside and it is directed that he be released forthwith, if not required in any other case.

3. The Rule is made absolute.

(S.R.SATHE, J.) (S.B.MHASE,J.)

For the reasons recorded seperately the Court passes the following order :

. The Petition is allowed.

2. The Order of detention passed by the Respondent No.1 against the detenue Akbar Mohamed Hussain Shaikh @ Akbar Dadhi, dated 15.3.2005 is set aside and it is directed that he be released forthwith, if not required in any other case.

3. The Rule is made absolute.

(S.R.SATHE, J.) (S.B.MHASE,J.)